

MRS. ICILE HELEN HINMAN

JUNE 22, 1960.—Ordered to be printed

Mr. JOHNSTON of South Carolina, from the Committee on Post Office and Civil Service, submitted the following

R E P O R T

[To accompany H.R. 9751]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 9751) for the relief of Mrs. Icile Helen Hinman, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of this measure is to provide that Mrs. Icile Helen Hinman, the widow of the late Lloyd J. Hinman, be deemed to have been the lawful wife of the said Lloyd J. Hinman at the time of his retirement within the meaning of the Civil Service Retirement Act.

EXPLANATION

The late Mr. Lloyd J. Hinman elected to retire on January 31, 1949, from his position with the Navy Department. He was 60 years of age, and had 37 years and 2 months of creditable service. When he retired, he appeared to be eligible under the law to elect a reduced annuity for himself and a survivorship annuity for his wife. He made such an election and named as his wife, Icile Helen (Judkins) Hinman. Mr. Hinman died on May 1, 1959.

Mrs. Hinman applied for survivorship annuity on June 10, 1959. She stated that she and the deceased were married on May 24, 1945, at Washington, D.C. and again on October 1, 1956, at Leonardtown, Maryland. The Civil Service Commission then determined that Mr. Hinman had been divorced from a previous wife on August 13, 1935, by a divorce a mensa et thoro, and that no final divorce decree had been entered at the time of his first marriage to Icile. The result of this was that it was held that the prior undissolved marriage pre-

vented Mr. Hinman from entering into a legal marriage in 1945 with anyone else. On May 28, 1956, an order was entered granting Mr. Hinman a divorce *vinculo matrimonii* with a bar against remarriage for four months. He and Icile were then remarried on October 1, 1956.

The problem which necessitates legislative relief in this instance is that technically he was not married at the time of his retirement and under the law survivorship benefits can be elected only to one to whom married at the time of separation.

The Civil Service Commission states:

The Commission has consistently viewed as undesirable in principle private relief legislation * * * except in exceptional instances, where a patent inequity exists * * * as in this case. Under the circumstances, the Commission recommends approval.

AGENCY VIEWS

Following is the report of the Civil Service Commission in regard to this measure:

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., February 23, 1960.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, House Office Building,

DEAR MR. CELLER: This is in further reply to your letter of January 20, 1960, requesting Commission report on H.R. 9751, a bill for the relief of Mrs. Icile Helen Hinman.

Mrs. Hinman is the widow of Lloyd J. Hinman, a former annuitant under the Civil Service Retirement Act. This bill proposes to provide a surviving widow's annuity for Mrs. Hinman, which is not authorized by existing law under the facts in this case.

Mr. Hinman elected to retire on January 31, 1949, from his position with the Navy Department, at age 60, with 37 years, 2 months of creditable service. At time of retirement he appeared to be eligible under the law to elect in lieu of a life annuity a reduced annuity with benefit to widow. He affirmatively chose the reduced annuity with benefit to widow. He listed his wife as "Icile Helen Judkins" (maiden name) and as date and place of marriage "May 21, 1945, Washington, D.C." He died May 1, 1959.

As there was no reason in 1949 to question the validity of his election, a reduced annuity with benefit to widow was allowed at the monthly rate to him of \$317, which was increased by operation of law October 1, 1955, to \$342 and on August 1, 1958, to \$376. The annuity for his survivor was computed in 1949 at \$159 per month, which would now be increased by Public Law 85-465 to \$175 per month.

Mrs. Hinman applied for survivor annuity on June 10, 1959. She stated on the application that she and the deceased were married on May 24, 1945, at Washington, D.C., and again on October 1, 1956, at Leonardtown, Md. The Commission then obtained information that the late Mr. Hinman had been divorced from his first wife, Mae, on August 13, 1935, by divorce *a mensa et thoro*. No final divorce decree had been entered at the time of his marriage to Icile on May

24, 1945, and therefore the prior undissolved marriage to Mae prevented him from entering into a legal marriage in 1945 with anyone else. An order was entered on May 28, 1956, granting him a divorce a vinculo matrimonii from Mae but prohibited either party from marrying again for a period of 4 months. Icile and the late Mr. Hinman were then married on October 1, 1956.

Mr. Hinman's election of a reduced annuity with benefit to widow was made under section 4(b) of the Retirement Act of May 29, 1930, as amended, which provided that a husband could elect a reduced annuity for his life with an annuity payable after his death to his surviving widow designated by him at the time of his retirement. As Mr. Hinman was not legally married to Icile at the time of his retirement as required by law, his election of a reduced annuity with benefit to widow could not be considered as valid. Accordingly, the Commission properly notified Mrs. Hinman that no survivor annuity was payable.

H.R. 9751 proposes to legislate the result Mrs. Hinman was seeking and give her the widow's annuity. Specifically, the bill would require that Mrs. Hinman be considered the widow of Lloyd Hinman from and after the time of his retirement, thereby affording her retroactive annuity title with payments beginning the first of the month in which he died and continuing until her death or remarriage.

While the existing law precludes payment of a survivor annuity to Mrs. Hinman, the equities in this case would indicate otherwise. Mr. Hinman relied on advice from his attorney in 1935 that the decree which would soon be entered in the then pending suit would be made absolute upon the expiration of the statutory period in November of that year. He never reconciled with his former wife and married Icile nearly 10 years later. It appears clear that he intended to make her his legal wife in 1945. This is borne out by the fact that they repeated their marriage vows in 1956 as soon as they could after the final decree had been entered. Further, it seems unlikely that he would have elected a reduced annuity with benefit to widow in 1949 if he had any idea that Mae could then be considered his legal widow.

As Mr. Hinman was paid reduced annuity, under the invalid election from the time of his retirement in 1949 until his death in 1959, there was due a lump-sum payment of \$6,180 which represented the difference between the total amount actually paid and the amount he would have received at a life annuity rate. Payment of this sum was recently made to Icile Helen Hinman. If H.R. 9751 is enacted, this amount must be recovered in full before any survivor annuity can be paid. After recovery, the present value of the annuity which would be provided by enactment of this bill is approximately \$22,000.

The Commission has consistently viewed as undesirable in principle private relief legislation which would afford one person benefits to which others similarly situated are not entitled. In exceptional instances, where a patent inequity exists, such legislation may be warranted. In our judgment, Mrs. Hinman's case is somewhat exceptional as above indicated.

Under the circumstances, the Commission recommends that favorable action be taken on this proposal.

It is noted that the bill does not provide an exception to the restriction on the use of the retirement fund imposed by the paragraph headed "Civil Service Retirement and Disability Fund" in section

101 of title I of the act of August 28, 1958, Public Law 85-844 (72 Stat. 1064). For technical accuracy, the words "Civil Services Retirement Act of May 29, 1930" should be changed to read "Civil Service Retirement Act of May 29, 1930, as amended."

The Bureau of the Budget advises that there is no objection to the submission of this report to your committee.

By direction of the Commission:

Sincerely yours,

ROGER W. JONES, *Chairman.*

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